

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAR, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JANET LAURA SHEPPARD,

Respondent-Appellant.

UNPUBLISHED

May 27, 2003

No. 245229

Macomb Circuit Court

Family Division

LC No. 01-051327-NA

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent Janet Sheppard¹ appeals as of right from a circuit court order terminating her parental rights to the minor child SAR after release pursuant to MCL 710.29(7). We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Sheppard and Matthew Roy are the parents of SAR, born September 19, 1997. The FIA filed a neglect petition in July of 2001. It alleged that Roy was incarcerated and Sheppard, a suspected heroin user, had left the child alone with her boyfriend. The boy lacked proper supervision, had not eaten, and was wearing only a soiled diaper. Following a preliminary hearing, the petition was authorized and the child was put in alternate placement. Visitation was suspended until Sheppard could provide a negative drug screen.

In August of 2001, Sheppard entered a no contest plea to the petition as amended and the trial court assumed jurisdiction over the child. Following a dispositional hearing, the boy was placed with an aunt and Sheppard was ordered to comply with the parent/agency agreement. Following a permanency planning hearing in June of 2002, the trial court authorized the FIA to file a termination petition; the petition was filed in August of 2002. It contained no factual allegations but sought termination under MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (j).

A hearing was held before a trial court referee on September 24, 2002. Before any witnesses were called, Sheppard announced that she “wish[ed] to voluntarily terminate my own rights.” The referee took a recess so Sheppard could review the release form with her attorney.

¹ The father’s parental rights were terminated by a separate order; he is not a party to this appeal.

The referee then conducted a hearing regarding termination of Roy's parental rights. After the hearing concluded, Sheppard returned to the courtroom.

Sheppard, who said she was presently incarcerated, stated that she was SAR's mother. She was twenty-two, had an 11th-grade education, and could read, write, and understand English. She acknowledged that she could not be forced to release her son for adoption. She stated that she was acting of her own free will and her decision was not the result of pressure or promises of anything. The following colloquy then transpired between Sheppard and the referee:

Q. Secondly, you should be aware that this release will have an effect on what are called your parental rights to this child. When I use the term parental right, I mean things like the rights which parents have to be consulted about such things as the child's education, discipline and whereabouts; the right to consent to medical treatment for the child; the right to consent to the child's school activities; the right to determine where the child lives; the legally and enforceable right to visit the child; the right to receive the child's earnings and the right to inherit property from the child. Do you understand that by signing this release, you are giving up all of your parental rights to this child?

A. Yes.

Q. And is this what you want to do?

A. Yes.

Q. After signing the release, you will no longer have any right to find out the whereabouts of your child, do you understand that?

A. Yes.

Q. Have you consulted with your attorney or any agency or a worker or anyone else regarding this release?

A. Yes.

Q. And you feel that you've had adequate counseling and adequate counseling time to make this decision?

A. Yes.

* * *

Q. Is this decision to release your rights to this child your own well-thought-out decision?

A. Yes.

Q. Do you understand that this release is a final release and that you will have no rights to change your mind?

A. Yes.

Q. Do you understand this release is irrevocable, it cannot be canceled, it will be for the rest of your life and for the rest of the life of the child?

A. Yes.

Q. Do you understand that by releasing all rights to your child you give up all rights of visitation, all rights to inherit [sic] any decision whatsoever concerning this child's health, education or welfare?

A. Yes.

Q. Will you please tell me, ma'am, in your own words, what I've just told you so that I can be certain you understand what you are doing when you sign the release?

A. I am giving up parental rights to where I have no contact, I don't even know my son . . . anymore regardless . . .

Q. Thank you.

A. . . . of anything.

The referee went on to advise Sheppard of her right to seek a rehearing and to appeal. The referee also advised her about the closing of adoption records and her right to request that identifying information not be released should SAR later seek her out. The referee read the release form aloud to Sheppard, who said she had no questions about it. The referee then read the statement accompanying the release aloud to Sheppard, who said she had no questions. Sheppard then signed the forms. The following colloquy then transpired:

Q. Ms. Sheppard, will you state on the record that the releases, which you've just signed, were given voluntarily, knowingly and without coercion?

A. I volunteer to terminate my own rights.

Q. But the signing of the releases, were that done . . .

A. I volunteered to sign.

Q. And you knew what you were doing?

A. Yes.

Q. And nobody coerced you?

A. No.

The referee found that Sheppard had released her rights freely and with the understanding of the rights she was relinquishing and that the release was in the child's best interests. Sheppard appeals of right.

II. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.² This Court reviews the trial court's findings of fact for clear error.³ A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made.⁴ Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order the termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests.⁵ The trial court's decision regarding the child's best interests is reviewed for clear error.⁶

III. The Trial Court's Decision

After review of the record, we conclude that the trial court fully complied with its statutory obligation to explain Sheppard's parental rights to her and the voluntary and permanent nature of the release.⁷ The record also supported the trial court's determination that the child was best served by the release.⁸ Sheppard's contention that the trial court erred in failing to advise her of the collateral consequences of the release has not been preserved for appeal⁹ and is not supported by the language of the statute.

Sheppard's claim that she was not aware of the nature of the proceedings or afforded adequate time to confer with counsel is belied by the record. The trial court disclosed that it was prepared to hold a hearing on the termination of parental rights. After Sheppard announced her intention to voluntarily release her rights, the trial court took a recess to permit her to confer with counsel regarding the release. When she returned, she acknowledged that she had conferred with counsel and felt that she had "had adequate counseling and adequate counseling time to make this decision." Therefore, the trial court properly accepted the release.¹⁰

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio

² *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

³ MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

⁴ *Jackson*, *supra* at 25.

⁵ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

⁶ *Trejo*, *supra* at 356-357.

⁷ MCL 710.29(6); *In re Blankenship*, 165 Mich App 706, 711-712; 418 NW2d 919 (1988).

⁸ MCL 710.29(6).

⁹ *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).

¹⁰ *Blankenship*, *supra* at 712.